



REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT

AT MOMBASA

CAUSE NO. 276 OF 2014

TRANSPORT WORKERS UNION .....CLAIMANT

VERSUS

AFRICAN SAFARI ADVENTURE .....RESPONDENT

J U D G M E N T

I N T R O D U C T I O N

1. The claimant is a trade union registered to represent the interests of workers in the transport and allied industry. She has brought this suit seeking:-
  - a. **order for Recognition by the respondent.**
  - b. **order compelling the respondent to implement the check off deductions**
  - c. **injunction to restrain the respondent from intimidating, harassing and threatening her employees.**
  - d. **order that the parties herein sign a Collective Bargaining Agreement (CBA).**
2. The basis of the suit is that the claimant has recruited 90% of the unionisable staff of respondent as members of the union but despite service of notice of recruitment and forwarding of check off forms, the respondent has refused to deduct and remit union dues as instructed vide the said check off forms. In addition it has averred that the respondent has declined to sign a Recognition Agreement in favour of the claimant. Instead the respondent has resorted to intimidating, harassing and threatening the recruited members in a bid to forcing them to revoke their union membership. That some of the victims of such conduct by the respondent include Nashon Mzera, ali Kirao, Salim Mwajora, Roimen Lekimagusi, Lucha Lazaro, Mohammed Sanaja and John Baya Stephen who have all been dismissed from employment. According to the claimant the matter was referred for conciliation by the Labour Minister but the respondent declined to attend.
3. Likewise the respondent has not filed any response to the present suit or attended hearing despite being served with summons and hearing notice. The suit therefore proceeded exparte by way of written submissions.

A N A L Y S I S A N D D E T E R M I N A T I O N

4. There is no dispute that the claimant did recruit 25 members from the respondents unionisable staff. There is also no dispute that the claimant served the respondent with Notice of such recruitment and check off forms duly signed by the recruited members on 16/2/2011. It is further not disputed that the matter was reported to the labour minister on 11/12/2012 and conciliator appointed but no solution was reached.
5. The issues for determination are whether the claimant has recruited a simple majority of the

respondent's unionisable staff and whether the orders sought ought to issue.

### **Simple majority**

6. After carefully perusing and considering the claim and the written submissions filed, the court was not satisfied that the claimant had recruited a simple majority of the respondent's unionisable staff. The claimant's annexure 1 only shows that 25 employees were recruited as members of the union but that is not enough proof that such number represented 90% of the staff as pleaded. The claimant should have pleaded and adduced evidence to prove the total number of the respondent's unionisable work force. There is therefore no basis to make a finding whether or not that the 25 recruited employees was equal or more than a simple majority of the respondent's unionisable staff as required under Section 54 of the Labour Relations Act.

### **RELIEFS**

7. In view of the finding above that the claimant did not prove that she recruited a simple majority of the respondent's unionisable staff, the prayer to order for recognition is declined. Likewise the prayer for injunction is dismissed for lack of evidence. In this court's view, there should have been evidence from the victims of the said harassment in order for the order to issue. The prayer for direction that parties sign a CBA is also declined in view of the finding that the threshold set by Section 54 *supra* has not been met. The court however grants the prayer for implementation of the checkoff deductions in respect of all the recruited members forthwith. The said deductions will however not be backdated. The claimant is also free to continue recruiting more members and in the event of any victimization of the recruited members, the court will be ready to entertain fresh suit to protect them.

### **DISPOSITION**

For the reasons stated above, judgment is entered for the claimant directing the respondent to forthwith commence deducting union dues from her unionizable staff who are members of the claimant and remit the same to the claimant as per the notice and check off forms signed on 16/2/2011. Each party shall bear her won costs.

Orders accordingly.

**Dated, signed and delivered this 13<sup>th</sup> February 2015.**

**O. N. Makau**

**Judge**